

TOWN OF TYNGSBOROUGH
REQUEST FOR PROPOSALS
FOR
LEASE OF ONE PARCEL OF TOWN-OWNED LAND
FOR OUTDOOR ADVERTISING

June 22, 2016

ALL OF THE TERMS, CONDITIONS, SPECIFICATIONS, APPENDICES, AND INFORMATION LISTED IN THE TABLE OF CONTENTS AND INCLUDED IN THIS REQUEST FOR PROPOSALS SHALL CONSTITUTE THE ENTIRE REQUEST FOR PROPOSALS PACKAGE AND SHALL BE INCORPORATED BY REFERENCE INTO ALL BID SUBMISSIONS

SCHEDULE

- | | |
|-------------------------------------|-------------------|
| 1. Advertise Request for Proposals | June 22, 2016 |
| 2. Deadline for Written Questions | July 8, 2016 |
| 3. Pre-Bid Conference | July 12, 2016 |
| 4. Bids/Bid Deposit Due (11:00 am) | July 22, 2016 |
| 5. Bid Openings | July 22, 2016 |
| 6. Designation of Successful Bidder | August 24, 2016 |
| 7. Lease Commencement Date | September 1, 2016 |

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I. REQUEST FOR PROPOSALS

To Interested Parties:

In accordance with General Laws Chapter 30B, Section 16, the Town of Tyngsborough (“TOWN”) invites interested parties to bid for the lease of ONE {1} specified location on Town property to erect, operate and maintain billboard or outdoor advertising structures (hereinafter called “Outdoor Advertising”) under a lease agreement. The location of the property is 120 Westford Road, Tyngsborough, MA 01879, Tyngsborough Parcel # Map 22 Block 1 Lot 0.

A copy of the Request for Proposals (“RFP”) may be obtained from the office of the Town Administrator, 25 Bryants Lane, Tyngsborough, MA 01879, or by email Matt Hanson, Assistant Town Administrator, at mhanson@tyngsboroughma.gov.

Bids must be submitted in a sealed envelope with the Bidder’s name, address, telephone number, name of the primary contact person, the date of submission and the words “**BID SUBMISSION FOR LEASE OF TOWN-OWNED LAND FOR OUTDOOR ADVERTISING**” clearly marked on the envelope.

Bids must be received no later than 11:00 a.m. **on July 22, 2016** to the Town Administrator at the address listed above at which time they will be publicly opened and read aloud. Late bids will not be accepted.

The bids will be evaluated and awarded on an individual basis to the highest responsible and eligible bidder. Bidders are encouraged to submit up to two bids, for an electronic billboard and a standard billboard. If the successful Bidder is unable to obtain all necessary approvals, permits, and licenses from federal, state, and local authorities associated with the display of outdoor advertising at the site, the Successful Bidder may request a termination of the lease agreement and the TOWN may award the bid to the next highest responsible and eligible bidder or re-advertise the offering or proceed in a manner the TOWN determines is in its best interest. If, for example, a bidder is unable to obtain approvals for an electronic billboard, the town may award the bid to the next highest responsible and eligible bidder for a standard billboard.

A pre-bid conference will be held at the Recreation Center, 120 Westford Road, Tyngsborough, MA 01879 at 10:00 a.m. **on July 12, 2016**. The Town strongly urges all potential bidders to attend the pre-bid conference. The pre-bid conference is the forum for requesting clarifications or changes. Questions or clarifications known to potential bidders prior to the pre-bid conference should be submitted in writing no later than 4:00p.m. **on July 8, 2016**. Written questions may be mailed, emailed, or faxed to the Assistant Town Administrator at the above address or mhanson@tyngsboroughma.gov. Should the TOWN amend or change the information in this RFP, the information will be distributed to all registered bidders in the form of an addendum. To become a registered bidder you must obtain your bid forms from the TOWN.

The bid award shall be in strict compliance with Massachusetts General Laws, Chapter 161A, as amended and shall not discriminate on the basis of race, creed, color sex, national origin, disability, or sexual orientation in consideration for an award.

The bid price shall be for the first year annual lease payment, which shall increase by 2.5% per year during the lease term, as described as follows and as shown on the plan in Appendix A:

Site: Tyngsborough Recreation Center, 120 Westford Road, a portion of the land adjacent to the Building, identified by the Town of Assessors as Map 22 Block 1 Lot 0, said portion containing 31,000 sq. ft. plus or minus. Proposed 20' wide limited access easement for a total length of 2000 sq. ft. plus or minus as shown on plan in Appendix A.

The term of the lease will be for twenty-five (25) years. Tyngsborough Town Meeting has authorized the Board of Selectmen to enter into a long-term lease agreement for outdoor advertising at this property.

THE TOWN RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS, IN WHOLE OR IN PART IN ITS ABSOLUTE DISCRETION, AND THEN TO ADVERTISE FOR NEW BIDS OR ISSUE A NEW PROCUREMENT, AS MAY BE IN THE BEST INTEREST OF THE TOWN. THE TOWN ALSO RESERVES THE RIGHT TO WAIVE ANY INFORMALITIES, MINOR DEVIATIONS, INSIGNIFICANT MISTAKES AND MATTERS OF FORM RATHER THAN SUBSTANCE AND TO SEEK CLARIFICATION OF ANY BID, WHICH CAN BE WAIVED OR CORRECTED WITHOUT PREJUDICE TO OTHER BIDDERS, POTENTIAL BIDDERS OR THE TOWN. NO OFFICER OR AGENT OF THE TOWN IS AUTHORIZED TO WAIVE THIS RESERVATION. THE TOWN SHALL NOT INCUR ANY OBLIGATION OR LIABILITY ON ACCOUNT OF ANY SUBMISSION MADE UNLESS AND UNTIL A DEFINITIVE AGREEMENT HAS BEEN ENTERED INTO BY AND BETWEEN THE TOWN AND THE SUCCESSFUL BIDDER.

II. BACKGROUND INFORMATION

A. Purpose

The Town hereby invites qualified individuals, corporations or other legal entities ("Bidder") to submit bids for the lease of ONE parcel of Town-owned land to erect, maintain, and operate outdoor advertising structures.

The TOWN's purpose is to maximize income for the location of an outdoor advertising structure in order to subsidize its general budget. The Successful Bidder will convey any and all ownership rights to advertising structures erected (if so requested by the TOWN) and permits issued, if any, as a result of this opportunity at the end of the Lease Term.

The TOWN has determined that it is in the public interest to offer a twenty-five-year lease term in order to allow Bidders sufficient time to amortize the costs of erecting a new quality, state-of-the-art advertising structure desirable to realize significant annual revenues.

In addition, the TOWN has a need to utilize outdoor advertising from time to time in order to promote the TOWN. The Lease will also provide for TOWN rights to use any unsold advertising space for public purposes.

B. Description of TOWN

The TOWN is a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts. The TOWN is located at 25 Bryants Lane, Tyngsborough, MA 01879.

The Town Administrator is the designated representative of the TOWN for real estate dispositions and for the purpose of managing this RFP process, subject to oversight and approval of the Board of

Selectmen. The TOWN's offices are located at 25 Bryants Lane, Tyngsborough, MA 01879. No lease may be awarded pursuant to this RFP until approved by the Board of Selectman and the Town Administrator.

C. Outdoor Advertising Sites

ONE location is the subject of this offering (the "Site" or the "Property"). Is listed in Section I above.

D. Accuracy and Completeness of Information

All information contained in this RFP with respect to the Property is summarized for illustrative purposes only. The Property is subject to physical inspection and independent verification of all information by the Bidder. The successful bidder for each Site (the "Successful Bidder") is responsible for identification of and compliance for the Site with all current by-laws, regulations, rules, permits, approvals, laws and other provisions that may be applicable to any proposed project and the use of the Property.

Any information provided by the TOWN to Bidders has not been audited or confirmed, and the TOWN does not make any representations, express or implied, as to the accuracy or completeness of such information or the conclusions to be drawn there from. Each Bidder agrees that the TOWN and its respective employees, agents and other representatives shall have no liability to such Bidder or any of its employees, agents or other representatives as a result of having provided such information.

III. GENERAL INFORMATION

A. Intent to Enter into a Lease Agreement

The TOWN intends to enter into a lease agreement to the Successful Bidder. The Successful Bidder will be required to enter into a Lease Agreement in the form provided in Appendix C. The Lease Agreement will permit the use of land for the placement of advertising structures on the Site.

During the term of the Lease Agreement (the "Lease Term"), the ownership of the structures will remain with the Successful Bidder. Upon the expiration or earlier termination of the Lease Agreement as it relates to any one Site, the TOWN may elect to have ownership of the structures be assigned and transferred to the Town. In the event the TOWN does not elect to take ownership of the advertising structure, the Successful Bidder will be required to remove the structure at their sole cost. (The TOWN may permit the base of the structure to remain in the ground at the TOWN's sole election). In addition, at the expiration the Lease Agreement, any permits related to the operation or construction of the structure shall be assigned to the TOWN. Lease amendments must be in writing and signed by individuals authorized to contract on behalf of your local government.

The TOWN reserves the right to accept, modify or reject any or all bids. Proposed changes to the Lease Agreement may not in any way materially alter the business terms outlined in this RFP and bids may not be conditioned upon acceptance by the TOWN of proposed changes to the Lease Agreement.

B. Lease Term

The Successful Bidder will be required to enter into the Lease Agreement substantially in the form provided in Appendix C within 30 days after Designation as the Successful Bidder. The Lease Agreement for each Site will be executed separately by the Successful Bidder. In the event the Successful

Bidder does not execute a Lease Agreement for a Site within 30 days after Designation as the Successful Bidder, this will be deemed a withdrawal of the bid for that Site by the Successful Bidder.

The Lease Agreement shall be for the right to the construct, maintain and operate an Outdoor Advertising Structure.

The term of the Lease Agreement will be for a term commencing upon September 1, 2016 and ending on August 31, 2041 (“Lease Term”).

C. Fees and Financial Obligations

The fees associated with this offering are broken into several phases as follows:

Lease Bond: A Performance Bond (“Bond”) or Letter of Credit (“LOC”) equal to fifty percent (50%) of the first year payment under the Lease Agreement is due to the TOWN upon execution of the Lease Agreement by the Successful Bidder. The lessee shall be required to renew the Bond or LOC for each year of the lease Term.

- Lease Payment: The annual lease agreement payment for each Site will be payable in twelve equal monthly installments.

D. Permitted Use

The Lease Agreement will restrict the use to outdoor commercial advertising. This will include electric billboards, paint/bulletin boards and poster boards advertising and shall not unreasonably interfere with other TOWN uses or other allowed uses on the Site. Successful Bidder shall not use paper displays on Advertising Structures, but may use tear-resistant vinyl displays or other displays that conform to the provisions of the Town’s zoning bylaw. Notwithstanding the foregoing, the Successful Bidder may request a change in the type of signage permitted at any particular Site subject to the written approval of the Town.

All sign content is subject to TOWN approval, and the TOWN Advertising Guidelines attached hereto as Appendix B. Please note that to protect the health and well-being of minor school children and to avoid any appearance of the Town’s endorsement of political issues, content featuring tobacco products, adult entertainment, and firearms are prohibited.

E. Utilities

Each Site requiring the use of electricity shall be metered at the expense of the Successful Bidder. The Successful Bidder is responsible for all utility permitting, installation and operating costs, including, but not limited to, electricity. The TOWN does not warrant that required electricity will be accessible to any Site.

F. Condition of Sites

The Sites are offered for Lease in their “as is” condition. A detailed data sheet, boundary plan, and aerial photograph of each Site are attached in Appendix A. Although the TOWN has made an effort to provide information about each Site, the TOWN offers no representations or warranties about the condition or suitability of the Sites offered in this RFP.

The TOWN has reviewed each of the Sites for consistency with TOWN bylaws. The TOWN does not warrant that this information is sufficient or valid for inclusion in any permit application process. Bidders are responsible for their own assessments of site conditions and suitability and the usefulness of the information. Bidders will likely have to apply to at least the Planning Board and Conservation Commission for approvals.

G. Site Investigation

The Successful Bidder will conduct, at its own expense, any testing during the due diligence period after designation as the Successful Bidder. The TOWN will assist in obtaining necessary TOWN approvals as required herein. If such testing indicates the Site is unable to support the outdoor advertising structure as proposed, the Successful Bidder may request a termination of the lease agreement.

The Successful Bidder shall submit a site access plan which is subject to TOWN review and approval. The plan shall include a site plan showing where the testing will take place and the nature of the tests. The site access plan should include tentative dates when the Successful Bidder wants to be on the Property and any other information required by the TOWN.

H. Erection of New Structures

The cost of all improvements to the Sites, including the erection of new structures for Outdoor Advertising, and all costs associated therewith including soils, geotechnical, environmental, engineering and other testing and permitting will be the sole responsibility of the Successful Bidder. No structures may be erected, improved, repaired or altered until the Successful Bidder submits detailed plans and specifications to the TOWN for review and receives written approval of said plans and specifications from the TOWN and received a Notice to Proceed for the specific Site.

I. Labor Harmony

The Successful Bidder must furnish labor doing work on the TOWN Sites that can work in harmony with all other elements of permanent and/or temporary labor employed by the TOWN or to be employed in the area of the Sites. Any costs or delays the Successful Bidder incurs due to any labor action shall be at the sole expense of the Successful Bidder. Labor actions shall not be considered a force majeure event.

J. Regulatory Compliance

The Successful Bidder will be solely responsible for obtaining all necessary approvals, permits and licenses from federal, state, and local authorities associated with the use of the Site. If the successful Bidder is unable to obtain all necessary approvals, permits, and licenses from federal, state, and local authorities associated with the display of outdoor advertising at the site, the Successful Bidder may request a termination of the lease agreement.

Bidders must be licensed to do business within the Commonwealth of Massachusetts by the OAB and may also be required to obtain state, local wetlands, building, electrical or other permits required to operate on the Site. As part of the qualification process for this RFP, prospective bidders must provide a copy of its OAB license to do business in the Commonwealth, or a copy of its application that has been filed with the OAB.

If it is determined that approvals or permits are required from any regulatory body, including, but not limited to the OAB, it will remain the sole responsibility of the Successful Bidder to obtain the necessary approval or permits. Failure to obtain any necessary approval or permit shall not relieve the Successful Bidder of any payment obligations set forth herein. Moreover, the Successful Bidder shall be solely responsible for any efforts, including, but not limited to dealings with regulatory agencies or any matter before a court of competent jurisdiction, whether formal or informal, necessary to determine the applicability of any federal or state laws, regulations or guidelines related to Outdoor Advertising.

K. Appearance and Character of Advertisements – Restrictions

All advertisements at any time inserted or placed by the Successful Bidder in or upon any location or display devices shall be of a reputable character. Any advertisements determined by the TOWN to be objectionable within the meaning of the Advertising Guidelines shall be removed by the Successful Bidder within 24 hours of notification of such determination. If the Successful Bidder shall fail to do so, the TOWN, at the Successful Bidder's expense, may forthwith remove the same without liability for such removal. In addition, the town may levy a charge of \$500/day if the advertisement in question is not removed.

L. Use and Maintenance of Unsold Advertising Space

On the outdoor advertising structure which is not contracted for use by paid advertisers, the TOWN shall have the right to display advertisements or announcements or goodwill, or for reasons it determines to be in the public interest (the "Advertising Benefit").

The Successful Bidder shall post advertisements for the TOWN in such display units at no charge to the TOWN for the space. However, the TOWN will pay fair market price to the Successful Bidder for production and installation of advertisements, or no charges or costs for electronic billboards. The TOWN shall give reasonable advance notice of its desire to place a specific advertisement at a specific location. If the space remains unsold after such notice, such advertisement shall be posted at no charge for the space. The Successful Bidder will keep on hand at all times, stock advertising initiated by the TOWN that is generic or which value is sustained over time. It will inform the TOWN in advance of using this to fill unsold space, however, it is not the intention of the TOWN to unreasonably interfere with the sale of space to last-minute paid advertisers.

At all times, outdoor advertising structures on which paid advertising is not present shall be either (i) posted with TOWN ads as provided in this Section, (ii) other public service announcements, or (iii) kept so that prior advertisements are either fully removed or maintained in good condition.

IV. **BID INSTRUCTIONS, REQUIREMENTS AND CONDITIONS**

A. Adherence to Bid Forms

The TOWN reserves the right to reject any and all bids. Failure to submit a complete and accurate packet as specified in this RFP or to conform to all instructions given in this RFP may result in the bid being rejected by the Town.

Bidders must be in good standing with the TOWN (not be in default on any present agreement with the TOWN) and be in good standing with the Commonwealth of Massachusetts (including but not limited to the Outdoor Advertising Board) to be eligible for contract award.

The TOWN reserves the right to waive any informalities, technicalities, deviations, mistakes, and matters of form, not of substance, of the qualification documents which can be waived or corrected without prejudice to other bidders, potential bidders, or any governmental body, as may be deemed in the best interest of the TOWN.

B. Pre-Bid Conference and Questions

A pre-bid conference will be held at 11:00 a.m. on July 12, 2016 at the office of the Town Administrator. The Town strongly urges all potential bidders to attend the pre-bid conference. The pre-bid conference is the forum for requesting clarifications or changes.

Questions or clarifications known to potential bidders prior to the pre-bid conference must be submitted in writing no later than 4:00 p.m., July 8, 2016. Written questions may be emailed, mailed or faxed to the attention of the Town Administrator at the above TOWN address. Should the TOWN amend or change the information in this RFP, the information will be distributed to all registered bidders in the form of an addendum.

C. Submission of Bid

Each bid must be submitted on the Bid Forms provided in the RFP Form Package and contain no alterations, additional terms or conditions.

A complete bid package shall consist of the following fully prepared and signed forms unless otherwise noted in the suggested order below:

- Summary of Bid and Deposit Form
- Bid Deposit in the amount of \$5,000 for bid upon in the form of a bank or certified check made payable to the TOWN.
Form A: Financial Offer - a separate Form A for each bid including the Bidder's Affidavit;
- Form B: Background Information and Statement of Experience;
- Form C: Business Plan;
- Form D: Bidder's Affirmations;
- Annual Financial Statements and Reports for the last three (3) years;
- A copy of the Bidder's Outdoor Advertising Board license or application for license if the Bidder is an advertising company;
- A commitment letter for a performance bond or letter of credit as described in Paragraph E below; and
- Certificate of Good Standing or equivalent.

The bid package must be submitted in a sealed package with the following information printed clearly on the front of the package:

LEASE OF ONE PARCEL OF TOWN-OWNED LAND FOR OUTDOOR ADVERTISING – June 22, 2016

The Name, Address and Telephone Number of the Company and Contact Person submitting the bid, and “Bid Submission for Lease of Parcel # Map 22 Block 1 Lot 0 of Town-Owned Land for Outdoor Advertising”.

Bid packages must be submitted on *or* before 11:00 a.m. on July 22, 2016 to the Town Administrator, Town of Tyngsborough, 25 Bryants Lane, Tyngsborough, MA 01879

If the TOWN amends or changes the information in this RFP, the information will be distributed to registered bidders in the form of an addendum.

D. Bid Opening

All Bid packages received in conformance with the directions described in this RFP will be publicly opened at Room 204 on July 22, 2016 at 11:00 a.m. at the office of the Town Administrator at 25 Bryants Lane, Tyngsborough, MA 01879.

INCOMPLETE SUBMISSIONS OR SUBMISSIONS WHICH ALTER ANY BID FORM MAY BE DEEMED NON-RESPONSIVE AND REJECTED AT THE SOLE DISCRETION OF THE TOWN.

E. Bid Deposit Fee Schedule and Bond Commitment

Bid Deposit:

As described above, a Bid Deposit amount of \$5,000 per site for which there is a bid submission. Checks must be in the form of a bank or certified check made payable to the TOWN and are required to be submitted with the Bid package.

Bond Commitment Letter:

In addition to the Bid Deposit, a commitment for a performance bond (“Bond”) or letter of credit (“LOC”) in an amount equal to Fifty percent (50%) of the first year payment under the Lease Agreement from a source acceptable to the TOWN must be submitted with the bid package. The Bond or LOC will be due within 30 days of Designation as the Successful Bidder for all Sites awarded.

The second and third highest Bidders will have their Bid Deposits returned to them upon execution of the Lease Agreement or within one hundred twenty (120) days from the Bid Opening, whichever is earlier. Other Bidders will have their bid deposits returned upon rejection of their bid.

Once designated as the Successful Bidder, as defined in Section V, the Bid Deposit will be nonrefundable unless the successful bidder, after due diligence, is unable to obtain necessary variances, special permits, or licenses to construct an advertising structure. If the Successful Bidder does not execute a Lease Agreement substantially in the same form provided in Appendix D within the allowed time or otherwise defaults in its performance of any other requirement of this RFP, that bidder will forfeit its Bid Deposit and the TOWN may designate the next highest responsible bidder as the Successful Bidder, or go back out to bid. If a bid deposit has already been returned, the next successful bidder will have to resubmit their bid deposit before to town will enter into a Lease Agreement.

NOTE: Once the bid submissions are publicly opened, withdrawal of any bid shall result in the forfeit of the Bid Deposit.

F. Right to Reject Bids and Waive Informalities

The TOWN reserves the right to reject any and all bids, in whole or in part, and then to advertise for new bids or to otherwise issue a new procurement, as may be in the best interest of the TOWN. The TOWN also reserves the right to waive any informalities, minor deviations, insignificant mistakes and matters of form rather than substance and to seek clarification of the submission, which can be waived or corrected without prejudice to other bidders, potential bidders or the TOWN.

ALL OF THE TERMS, CONDITIONS, SPECIFICATIONS, APPENDICES AND INFORMATION USED IN THE TABLE OF CONTENTS AND INCLUDED IN THIS RFP SHALL CONSTITUTE THE ENTIRE RFP PACKAGE AND SHALL BE INCORPORATED BY REFERENCE INTO THE BID SUBMISSION. NO CONDITIONS, OTHER THAN THOSE SPECIFIED IN THIS RFP, WILL BE ACCEPTED AND BIDS SUBJECT TO BIDDER'S CONDITIONS MAY BE REJECTED.

V. **BASIS OF DESIGNATION AND AWARD**

The bids will be evaluated and awarded on an individual basis to the highest responsible and eligible bidder. Bidders are encouraged to submit up to two bids, for an electronic billboard and a standard billboard. If the successful Bidder is unable to obtain all necessary approvals, permits, and licenses from federal, state, and local authorities associated with the display of outdoor advertising at the site, the Successful Bidder may request a termination of the lease agreement and the TOWN may award the bid to the next highest responsible and eligible bidder or re-advertise the offering or proceed in a manner the TOWN determines is in its best interest. If, for example, a bidder is unable to obtain approvals for an electronic billboard, the town may award the bid to the next highest responsible and eligible bidder for a standard billboard.

Bids shall be evaluated on the basis of the value of the proposed first year annual lease payment. The amounts of the lease payment for the second through 25th years of the lease agreement shall be the amount of the successful bidder's first year annual lease payment increased by a compounding inflation factor of 2.5% per year throughout the 25-year lease period.

A Bidder will be deemed responsible and eligible if: 1) the bid package submittal is complete; 2) the bidder provides proof of sufficient assets to cover all obligations; 3) the bidder is in good standing with the TOWN, and 4) the Bid meets all of the requirements of the RFP.

Failure to submit a fully completed and accurate bid package as specified, or to conform to all instructions given, or to meet the experience requirements as defined herein, may result in the bid being rejected by the Town.

The TOWN reserves the right to seek clarification from any Bidder of the documentation submitted or information obtained from references, and may require the submission of supplemental information so that a proper evaluation can be made.

The TOWN expects to designate the highest responsible and eligible bidder (“Successful Bidder”) approximately seven days (7) after the bid opening (“Designation”). For the bidders deemed “eligible and responsible,” the highest first year annual lease payment will be the criteria for the award.

Acceptance of a bid shall be subject to a vote of the TOWN’s Board of Selectman approving the Lease to the Successful Bidder.

If the Successful Bidder fails to perform in accordance with the requirements in this RFP within the specified time periods, then the Successful Bidder shall forfeit and the TOWN shall have the right to retain the Bid Deposit and any additional deposits and fees, and all obligations of the TOWN to the Successful Bidder relative to the Site shall cease, and the TOWN may award the bid to the next highest responsible and eligible bidder or re-advertise the offering or proceed in a manner the TOWN determines is in its best interest.

Thereafter, in the event the TOWN notifies the second or third highest bidder that it is now the Successful Bidder, and the newly Designated Successful Bidder fails to sign the Lease Agreement within thirty (30) days of such notice, or otherwise perform in accordance with the requirements in this RFP, then the Bid Deposit and any additional deposits and fees of that Successful Bidder shall be forfeited to the TOWN.

VI. OTHER TERMS AND CONDITIONS

A. Execution of Lease Agreement

A draft Lease Agreement containing more specific and additional terms has been attached as Appendix C. The Successful Bidder will be required to enter into a Lease Agreement substantially similar to that attached within thirty (30) days after Designation as the Successful Bidder. Failure by the Successful Bidder to execute the Lease Agreement in a timely manner may constitute a default of the bid process by the Successful Bidder, and failure to execute the Lease Agreement may result in the Successful Bidder’s deposit being forfeited, and the Lease Agreement may then be offered to the next highest, responsible, and eligible Bidder or the opportunity may be re-bid at the sole discretion of the TOWN.

B. Performance Bond/Letter of Credit

Upon execution of the Lease Agreement, the Successful Bidder will be required to provide to the TOWN a Bond or LOC from a source acceptable to the TOWN in the amount of Fifty percent (50%) of the first year payment under the lease agreement. The Bond or LOC shall secure all obligations of the Successful Bidder to reimburse the TOWN for all amounts due through the term of the Lease Agreement, and shall be renewable and/or remain in place for each year during the Lease Term.

C. Coordination with TOWN Departments

Interaction with the TOWN permitting and operating departments will be required for approval of design, construction and maintenance of structures at each Site.

D. Construction Plans and Specifications

The Successful Bidder will be required to work with all appropriate TOWN Departments in the design and construction of the Outdoor Advertising. All plans must be reviewed and approved in writing by the TOWN prior to their being made a part of any permit applications. The Successful Bidder must submit its construction plans and specifications to the TOWN for review and permitting. Be advised that the TOWN Departments may require additional conditions with which the Successful Bidder will be required to comply, including, but not limited to, insurance and bonding requirements.

E. Cost of Improvements

Successful Bidder shall provide to the TOWN within sixty (60) days of the completion of the construction of any outdoor advertising structure a statement that there are no mechanics liens or other liens on the Site due to the Successful Bidder's activities relative to the Site.

F. Equal Employment Opportunity

The Successful Bidder shall not discriminate against any employee because of race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its activities authorized under the Lease Agreement, including, without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, subcontractors or trades persons.

BID FORM A FINANCIAL OFFER

Please copy as many times as necessary. Each Site for which you submit a bid must have its own Page 1 of Bid Form A.

The undersigned hereby offers to enter into a Lease with the TOWN for the right to erect, operate, and maintain advertising structures, subject to the provisions contained in the “Request for Proposals for Lease of ONE Parcel of Town-Owned Land for Outdoor Advertising” **dated June 22, 2016 (the “RFP”)** **in** exchange for the following compensation to the TOWN.

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP _____

Bidder's First Year Annual Lease Payment (Basis of Award):

IN WORDS:

IN NUMBERS: \$ _____

In submitting this Financial Offer or Offers for the Outdoor Advertising Rights, the undersigned hereby acknowledges that he/she has received and read a copy of the TOWN's “RFP” and any and all addendums noted above, has acquainted himself/herself with all matters therein referred to, and agrees to all terms and conditions thereof. Page 12 of the RFP identifies that the annual lease payments shall increase 2.5% per year during the lease term.

The undersigned or the entity that the undersigned represents acknowledges that once selected as the Successful Bidder, the Successful Bidder shall provide surety in the form of a performance bond or letter of credit in an amount equal to fifty percent (50%) of the proposed first year lease payment and that the TOWN may draw down such letter of credit or go against such surety if the Successful Bidder fails to pay any amounts owed to the TOWN in a timely manner, including but not limited to any fee or reimbursement, whether or not any lease is executed.

SIGNED AND SEALED:

PRINT COMPANY NAME

BY: _____

SIGNATURE

PRINT NAME

TITLE

STREET ADDRESS

CITY

STATE

ZIP _____

DATE _____

TELEPHONE _____

BIDDER'S AFFIDAVIT

(One Affidavit to be signed for each entity)

The undersigned, being duly sworn, deposes and says that s/he is the:

[SOLE OWNER; PARTNER; PRESIDENT; TREASURER; OR OTHER DULY AUTHORIZED
OFFICIAL OF A CORPORATION]

Of _____

NAME OF OFFEROR AS APPEARING IN SUBMITTED PROPOSAL and certifies under penalties of perjury that this Financial Offer is in all respects bona fide, fair and without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural persons, joint venture, partnership, corporation or other business or legal entity.

SIGNATURE (DULY AUTHORIZED)

PRINT NAME

PRINT TITLE

Commonwealth of Massachusetts

County of _____, ss _____ 2016

On this _____ day of _____, 2016, before me, the undersigned notary public,
personally appeared _____ proved to me through satisfactory
evidence of identification, which were _____ to be the person
whose name is signed on the preceding or attached document, and who swore or affirmed to me that the
contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Seal

Notary Public _____

Print Name: _____

My commission expires: _____

BID FORM B

BID FORM B Page 1 of 4

BACKGROUND INFORMATION and STATEMENT OF EXPERIENCE

Instructions: There are four parts to Form B: Each section should be completed in full and all attachments marked "Form B".

Part 1. Background Information:

A. Name of Business

Business Address

City _____ State _____ Zip _____

Telephone Number _____ Fax Number _____

Web Site Address (if any) _____

B. Please identify a Contact for this RFP process:

Name of Contact Person _____

Contact Telephone Number _____ Contact Fax _____

Email Address _____

C. Business Federal Tax Identification Number _____

D. Form of Business: Corporation, Partnership, Sole Proprietorship, etc. (Corporate Bidders must attach a Certificate of Good Standing from the Secretary of State's Office to this Form B.)

E. All Business Owner(s) Title(s) and/or Officers (if corporation)

(Attach additional pages if necessary)

F. Length of time in business _____

G. Has the Business or have any of the Business owners ever had any prior relationship with the TOWN as a vendor?

☐ Yes ☐ No If yes, please explain:

G. Have you or any of the Business Owners in this endeavor ever been convicted of felony violations of Federal, state or local laws (other than Traffic violations)? Yes ☐ No ☐ If so, please explain:

H. Have you, the Business, or any of the Business' Owners filed for bankruptcy within the past seven years? Yes ☐ No ☐ If yes, please explain:

J. Are there any pending or recent law suits against the Business or the Business Owners?
Yes ☐ No ☐ If yes, please explain:

K. Are you an advertising media company that intends to sell advertising space to third parties? Yes ☐
No ☐ If yes, please attach a copy of your OAB license or pending application form.

Part 2. Business References

In addition to completing the following information, please provide contact information of reference from each of the following:

Reference #1 Bank

Name	Account #
Address	
City	State Zip
Contact Person	Telephone #

Reference #2 Insurance Agent

Name	Account #
Address	
City	State Zip
Contact Person	Telephone #

Reference #3 Landlord

Name	Account #	
Address		
City	State	Zip
Contact Person	Telephone #	

Reference #4 Landlord

Name	Account #	
Address		
City	State	Zip
Contact Person	Telephone #	

Part 3. Evidence of Financial Ability

The Bidder shall provide evidence of financial ability to carry out the requirements of the RFP and to meet the cost estimate of capital improvements (see Bid Form C. Item #6) in both of the following forms:

1. Financial statements for the last 3 consecutive years (separate envelope)
2. A letter from a reputable bank or financial institution that verifies the Bidder's financial ability through balances and/or borrowing capacity sufficient to meet the proposed investment.
3. A commitment letter for a performance bond, letter of credit or other surety in an amount equal to 50% the first year Minimum Annual Guarantee Lease Fee.

Part 4. Experience

Bidders may attach separate sheets to provide information. The Bidder shall provide evidence of the necessary experience to carry out the requirements of the RFP by answering the following questions:

Describe any proposed joint venture, partnership or other organization, if any, which may have been developed in order to respond to this RFP. Describe who the prime Bidder is and who any secondary Bidders may be, the nature of the consortium, and role of each member or partner. (All information requested in Form B of RFP must be included for each and every member or partner of any proposed consortium.) If this question is not applicable explain why.

Part 5. Authorization for Release of Information and Certification

I, the undersigned, hereby authorize release to the Town any and all credit information concerning the individual(s), business(s) or organization(s) listed below. I authorize the TOWN to obtain credit information from the Bidder's bank, insurance agency, credit bureaus, and customer and credit references.

I understand that this information is to be used solely for the purpose of evaluating the Bidder's ability to perform the requirements of this RFP.

I HEREBY CERTIFY THAT THE STATEMENTS MADE ON FORM B ABOVE AND ON ANY ATTACHMENTS ARE TRUE.

PRINT BIDDER'S NAME

BY:

SIGNATURE

(DULY AUTHORIZED)

PRINT NAME

TITLE

DATE

BID FORM C
BUSINESS PLAN

Bidders shall use additional sheets marked “Form C- Business Plan” to answer the following questions about their proposed Operating Plan.

1. Make a brief statement as to your overall outdoor advertising strategy for the bid location.
2. Explain how you will respond to emergencies.
3. List the particular person(s) and provide resume(s) for the staff that will be responsible for communication with the TOWN.

BID FORM D

BIDDER’S AFFIRMATIONS AND BENEFICIAL INTEREST STATEMENT

I hereby state, under the penalties of perjury, that the true names and addresses of all persons, who have or will have a direct or indirect beneficial interest in the advertising rights located at the TOWN billboard site location are listed below in compliance with the provisions of Section 40J of Chapter 7 of the Massachusetts General Laws and I further state that I am in position to know the names of all those with a beneficial interest. Name, and residence and phone number of all persons’ with said beneficial interest.

Name

Residence Address

Telephone Number

[Attach additional sheet if more space needed]

The undersigned also acknowledges and states that none of the above listed individuals is an official elected to public office in the Town or an employee of the Town.

SIGNED under the penalties of perjury.

Print Bidder Name:

Authorized Signature:

Print Signer’s Name:

Title:

Date:

- If “persons” are publicly traded corporations, only owners of ten percent (10%) or more of the stock of companies traded on a national exchange need to be used.

Request for Proposals
LEASE OF ONE PARCEL OF TOWN-OWNED LAND FOR OUTDOOR ADVERTISING – June 22, 2016

Commonwealth of Massachusetts

County of _____, ss

_____.2016

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which were, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Seal

Notary Public

Print Name:

My commission expires: _____

I hereby certify, under penalties of perjury, that:

A. Non-Collusion Statement

This proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section, the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

B. Revenue Enforcement Certificate

Pursuant to M.G.L. Ch. 62C, Sec. 49A, that I (my company), to the best of my knowledge and belief, have (has) filed all state tax returns and paid all state and local taxes required under law.

Social Security Number or Federal Identification Number

C. Employer’s Certificate of Compliance with Massachusetts Employment and Training Law

Pursuant to G. L. C. 151A, Sec 19A(b),

(Name of Employer)

O.E.T. 10 Number has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions. 1 The employer may certify its compliance if it has entered into and is complying with a repayment agreement satisfactory to the Commissioner or there is a pending adjudicatory proceeding or court action contesting the amount due pursuant to G. L. C. 151A, Sec.19A©.

Print Bidder’s Name:

Authorized Signature: _____

Print Signer’s Name: _____

Title: _____

Date: _____

Request for Proposals
LEASE OF ONE PARCEL OF TOWN-OWNED LAND FOR OUTDOOR ADVERTISING – June 22, 2016

Commonwealth of Massachusetts

County of _____, ss

_____.2016

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which were, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Seal

Notary Public

Print Name:

My commission expires: _____

APPENDIX B

GUIDELINES REGULATING TOWN ADVERTISING

Purpose

Through these Guidelines the TOWN intends to establish uniform, viewpoint-neutral standards for the display of commercial advertising on or in all TOWN property. In setting its advertising standards, the TOWN seeks to fulfill the following goals and objectives:

- (a) maximization of revenue generated by advertising;
- (b) maintaining a welcoming environment for all TOWN residents and visitors;
- (c) protecting the safety and well-being of minor school-aged children;
- (d) avoiding the identification of the TOWN with advertisements or the viewpoints of the advertisers.

The TOWN reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its primary function, and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

Commercial Advertising Standards

The bidder shall not display or maintain any advertisement that falls within one or more of the following categories:

- (i) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the TOWN will determine whether a reasonably prudent person, knowledgeable of the TOWN's and using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.
- (ii) Tobacco. The advertisement promotes the sale or use a tobacco or tobacco-related products, including depicting such products, including electronic cigarettes.
- (iii) Profanity. The advertisement contains profane language.
- (iv) Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual, or (b) contains image(s) of firearm(s) that occupy 15% or more of the overall advertisement.
- (v) Violence. The advertisement contains an image or description of graphic violence, including, but not limited to (1) the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.

- (vi) Unlawful goods or services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- (vii) Unlawful conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
- (viii) Obscenity or nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms “obscene” and “nudity” shall have the meanings contained in Massachusetts General Laws Ch. 272, §31.’ Mass. Gen. Laws ch. 272. §31, defines “obscene” as follows: “matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct **in** a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value” Mass. Gen. Laws. Ch. 272, §31, defines “nudity” as follows: “uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.”) 2 Mass. Gen. Laws Ch. 272, §3 I, defines “minor” as “a person under eighteen years of age.
- (ix) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts, or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term “minor” shall have the meaning contained in Massachusetts General Laws Ch. 272, §31
- (x) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political campaign speech” is speech that (I) refers to a specific ballot question, initiative petition, or referendum, or (2) refers to any candidate for public office.
- (xi) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by the Town or the Commonwealth of any service, product or point of view, without prior written authorization of the TOWN (through its Town Administrator).
- (xii) False, misleading, or deceptive commercial speech. The advertisement proposes a commercial transaction, and the advertisement, or any material contained in it, is false, misleading, or deceptive.
- (xiii) Libelous speech, copyright infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject the TOWN to litigation.
- (xiv) “Adult”-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, Trademarks, slogans or other materials which are identifiable with, films rated “X” or “NC-17,” video games rated M or A O, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites, and escort services.
- (xv) Advertisement of Alcoholic Beverages. Advertisements related to the sale of alcoholic beverages shall contain a statement, occupying at least 5% of the area of the advertisement, that indicates the legal

drinking age in Massachusetts and warns of the dangers of alcohol consumption during pregnancy, or in connection with the operation of heavy machinery, or while driving.

APPENDIX C

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease”) is made on this _____ day of _____, 2016 (the “Effective Date”), by and between the Town of Tyngsborough, acting by and through its Town Administrator with the approval of the Board of Selectmen, having an address of 25 Bryants Lane, Tyngsborough, MA 01879 (“Landlord”), and _____, a _____, having a principal place of business at _____ (“Tenant”).

1. PREMISES

1.1 Premises. Landlord is the owner of a parcel of land located at _____, Tyngsborough, Massachusetts, and described in a deed recorded with the Middlesex North District Registry of Deeds in Book _____, Page _____ (the “Property”). Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, a portion of the Property containing _____ square feet and shown as “_____” on the sketch plan attached hereto as Exhibit A and incorporated herein (the “Premises”). Said Premises are leased to Tenant together with the non-exclusive right of way over, under and upon a portion of the Property shown as “_____” on the sketch plan for pedestrian and vehicular ingress to the Premises and egress out to a public way and for utilities.

1.2 Condition of Premises. The Premises are delivered to Tenant, and Tenant accepts the Property, including the Premises and all access ways, in their present condition, “AS IS,” it being agreed that Tenant has had an opportunity to examine and inspect the Premises in all respects, that Landlord has made no representations or warranties of any kind with respect thereto, and that Landlord shall have no obligation to maintain, do any work on, or make any improvements to the Premises.

2. TERM

This Lease shall be for a term of twenty-five (25) years (the “Term”), commencing on September 1, 2016 (the “Commencement Date”) and terminating on August 31, 2041 (the “Termination Date”), unless terminated earlier, as provided herein. All other provisions of this Lease (except the obligation to pay Base Rent) shall be effective as of the Effective Date.

3. RENT

Base Rent. Starting on the Commencement Date, Tenant shall pay Landlord an annual rent in the amount of _____ (\$_____) for the first year of the Lease (“Base Rent”). Thereafter, Base Rent shall increase each year during the Term of this Lease by ONE and one-half percent (2.5%) Lease, with such adjustment occurring on each anniversary of the Commencement Date (each, an “Adjustment Date”). Following each Adjustment Date, the term Base Rent hereunder shall be deemed to refer to the Base Rent as hereby adjusted pursuant to the terms of this Lease. Base Rent shall be paid in twelve (12) equal monthly installments and paid in advance on the first of each month.

Additional Rent. From the Effective Date, Tenant agrees to reimburse Landlord, as “Additional Rent,” for any documented increase in real estate taxes, levies, betterments or assessments, fees or charges that are assessed or chargeable during the Term of this Lease in relation to the Premises or Tenant’s use

thereof. Landlord agrees to provide Tenant any documentation evidencing the increase and how such increase is attributable to Tenant's use. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, structures or improvements installed or placed on the Premises by Tenant. Base Rent and Additional Rent are referred to, together, as the "Rent."

Triple Net Lease. Landlord and Tenant acknowledge and agree that this is an absolute triple net lease, and Tenant shall have the sole responsibility to maintain the Premises. All payments of Rent shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Rent herein specified in each year during the term of this Lease free of any taxes, assessments, charges, or impositions of any kind charged, assessed or imposed on or against the Premises. Landlord shall not be expected or required to pay any such charge, assessment or imposition, or furnish any services to the Premises or be under any obligation or liability hereunder except as herein expressly set forth. All costs, expenses and obligations of any kind relating to the maintenance of the Premises, including without limitation all alterations, repairs, restoration, reconstruction and replacements as hereinafter provided, which may arise or become due during the term hereof, shall be paid by Tenant at Tenant's sole cost and expense.

3.4 Manner of Payment. All Rent and other payments required to be made by Tenant to Landlord under this Lease shall be paid without demand or off-set, by check made payable to the "Town of Tyngsborough," and delivered to Landlord at the address set forth above, or at such other place as Landlord may from time to time direct by written notice to Tenant.

3.5 Late Payments. All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by Landlord at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor or similar entity, plus TWO percent (2%).

3.6 Holdover. If Tenant remains in possession of the Premises after the expiration of the Term of this Lease, then Tenant will be deemed to be occupying the Premises on a month-to month basis, subject to the terms and conditions of this Lease, except that the amount of the Base Rent shall be two hundred percent (200%) of the Base Rent in effect as of the expiration of this Lease.

4. UTILITIES

4.1 Provision and Payment of Utilities. Landlord shall have no obligation to provide utilities to the Property, including the Premises. Tenant shall be responsible for obtaining and paying for all utilities, including, without limitation, water, sewer, cable, oil, gas, telephone or electricity. Tenant shall pay promptly, as they become due, all bills for utilities that are furnished to the Premises (whether prior or during the Term, or subsequent thereto, if relating to Tenant's use and/or occupancy of the Premises). In the event Tenant requires utilities or equipment, the installation and maintenance thereof shall be Tenant's sole obligation, provided that such installation shall be subject to Landlord's prior written consent and shall be installed in conformity with plans and specification provided by Tenant and approved by Landlord. The utilities shall be installed in a manner that avoids unnecessary interference to other activities on the Property and shall be reasonable in appearance, in Landlord's reasonable judgment. If Tenant fails to pay for the utilities furnished to the Premises, Landlord shall have the right, but not the obligation, to pay the same, and Tenant shall reimburse Landlord promptly upon demand for all costs, expenses and other sums of money in connection therewith, as Additional Rent.

4.2 Easements. The Town agrees to grant such reasonable easements as may reasonably be required by electric, and other utility companies for the purposes of servicing the equipment on the Premises, subject to authorization and on such terms and conditions as are acceptable to the Town.

5. USE OF PREMISES

5.1 Permitted Purposes. Tenant shall use the Premises solely for the construction, operation, and maintenance of outdoor advertising structures (together with any other structures and improvements related thereto, the “Advertising Structures”) subject to all of the terms and conditions set forth in the “Request for Proposals for Lease of ONE Parcel of Town-Owned Land for Outdoor Advertising” issued by the Landlord and dated _____ (the “RFP”) (Exhibit B), and the Bid submitted by the Tenant dated _____ (the “Bid”) (Exhibit C) (the “Permitted Purposes”). In the case of a discrepancy between the RFP and the Bid, the provisions of the RFP shall prevail. Tenant shall limit outdoor advertising to paint/bulletin boards and poster boards advertising and shall not unreasonably interfere with the use of the Property by Landlord and others. Tenant shall not use paper displays on Advertising Structures, but may use tear-resistant vinyl displays. Notwithstanding the foregoing, the Tenant may change the type of signage permitted at the Premises provided that Tenant has obtained Landlord’s prior written approval. All sign content is subject to Landlord’s approval, and the Advertising Guidelines attached hereto as Exhibit D, as the same may be amended from time to time by Landlord. All advertisements at any time inserted or placed by the Tenant shall be of a reputable character. Any advertisements determined by Landlord to be objectionable within the meaning of the Advertising Guidelines shall be removed by Tenant within twenty-four (24) hours of notification of such determination. If Tenant shall fail to do so, Landlord, at Tenant’s expense, may forthwith remove the same without liability for such removal.

5.2 Use and Maintenance of Unsold Advertising Space. On the Advertising Structures that are not contracted for use by paid advertisers, Landlord shall have the right to display advertisements or announcements or goodwill, or for reasons it determines to be in the public interest (the “Advertising Benefit”). Tenant shall post advertisements for the Landlord in such display units at no charge to the Landlord for the space. However, Landlord will pay fair market price to Tenant for the production and installation of advertisements. Landlord shall give Tenant at least thirty (30) days prior written notice of its desire to place a specific advertisement at the Premises. If the space remains unsold after such notice period, Landlord’s advertisement shall be posted at no charge for the space. Tenant will keep on hand, at all times, stock advertising initiated by Landlord that is generic or which value is sustained over time. Tenant shall inform Landlord in advance of using this to fill unsold space; however, it is not the intention of Landlord to unreasonably interfere with the sale of space to last-minute paid advertisers. At all times, the Advertising Structures on which paid advertising is not present shall be either: (i) posted with Landlord’s advertisements, as provided in this Section, (ii) other public service announcements, or (iii) kept so that prior advertisements are either fully removed or maintained in good condition.

5.3 Installation of Advertising Structures. Tenant acknowledges and agrees that Landlord shall have no obligation to make any improvements to the Premises, and that Tenant shall be responsible for performing all site work, landscaping, including grass mowing and related construction as required to make the Premises suitable for the Permitted Purposes, all at its sole cost and expense.

5.4. Assignment or Subletting. Tenant shall not assign this Lease or sublet the Premises or any part thereof without Landlord’s prior written consent, which may be withheld in Landlord’s sole and absolute discretion.

5.5. Hazardous Substances. Tenant agrees that it shall not maintain, generate, allow or bring on the Premises or transport or dispose of on or from the Property any Hazardous Waste, Hazardous Material, Oil or radioactive material. As used herein, the terms “Hazardous Waste”, “Hazardous Material”, and “Oil” shall be defined as provided in Section 2 of Chapter 21C, Section 2 of Chapter 21D, and Section 2 of Chapter 21E of the General Laws of Massachusetts, and the regulations promulgated thereunder, as such laws and regulations may be amended from time to time (collectively, the “Hazardous Substances”).

5.6. Compliance with Laws, Regulations, and Codes; Landlord’s Regulations. Tenant shall obtain all necessary certificates, permits and other approvals required by any federal, state and local authorities, including, without limitation, the Outdoor Advertising Board, necessary to undertake any construction, repair, renovations or improvements to or to use or occupy the Premises. Tenant shall at all times be licensed to do business in the Commonwealth of Massachusetts by the Outdoor Advertising Board and shall comply with all other applicable laws and all reasonable rules and regulations of Landlord, as the same may be amended from time to time.

5.7. Failure to Use Premises. Tenant shall use the Premises to the fullest extent possible and reasonable. If Tenant shall fail to so use the Premises, Landlord shall have the remedies provided herein for default of this Lease.

6. IMPROVEMENTS

Improvements. Tenant shall not construct the Advertising Structures or any other related permanent or temporary subsurface or surface structures or other improvements on the Premises unless Tenant has obtained Landlord’s prior written approval. Landlord’s approval for the Advertising Structures and other related temporary structure or improvements consistent with the Permitted Purposes shall not be unreasonably withheld. All allowed or required alterations or additions shall be at Tenant’s sole cost and expense, and shall be in quality at least equal to the present construction.

6.2. Governmental Approvals. Landlord agrees that Tenant’s ability to use the Premises is contingent upon Tenant’s ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary by Tenant for its use of the Premises, including without limitation applications for zoning variances, amendments, special use permits, and construction permits (collectively referred to as “Governmental Approvals”). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Governmental Approvals for Tenant’s use under this Lease and agrees to reasonably assist Tenant with such applications at Tenant’s sole cost and expense, except with respect to local permits and/or approvals where Landlord’s assistance may constitute a conflict of interest. Tenant shall use commercial good faith and diligent efforts to obtain, at its sole cost and expense, such Governmental Approvals promptly after the Effective Date and shall obtain all necessary Governmental Approvals by April 30, 2017 (the “Due Diligence Period”). Tenant agrees to submit and obtain Landlord’s prior written approval of any plans and specifications that Tenant intends to submit to obtain any Governmental Approvals. If Tenant fails to obtain any required Governmental Approval within said Due Diligence Period despite Tenant’s diligent efforts, either Tenant may terminate this Lease by giving Landlord written notice thereof prior to the expiration of said Due Diligence Period, without recourse to the other. Notwithstanding anything herein to the contrary, if Landlord determines that Tenant is not using diligent efforts to obtain all required Governmental Approvals, Landlord reserves the right to revoke this Lease by giving Tenant written notice thereof at least thirty (30) days prior to the termination date stated in said notice.

6.3. Inspections, Tests. Landlord agrees that Tenant's ability to use the Premises is contingent upon its suitability for Tenant's intended use. Tenant shall have the right at any time following the Effective Date and prior to the expiration of the Due Diligence Period, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys and other reasonably necessary tests (the "Tests") to determine the suitability of the Premises for the Permitted Purposes ("Due Diligence"). During any Due Diligence activities, Tenant shall have insurance which covers such activities as set forth in Section 9, Insurance. Tenant will notify Landlord of any Tests in writing at least forty-eight (48) hours prior to performing the same, and will coordinate the scheduling of such activities with Landlord. Tenant shall obtain Landlord's consent (which shall not be unreasonably withheld) prior to conducting any subsurface Tests. If in the course of its Due Diligence Tenant determines that the Premises are unsuitable for the Permitted Purposes, then Tenant shall have the right to terminate this Lease prior to the expiration of the Due Diligence Period by delivery of written notice thereof to Landlord, without recourse. Notwithstanding the foregoing, Tenant shall restore the Premises to their condition as of the Effective Date and repair any damage caused by Tenant or its agents, employees, contractors, representatives or invitees. Tenant will defend, indemnify, and hold harmless Landlord against all costs (including reasonable attorneys' fees), claims, and damages relating to the Tests or the acts or omissions of Tenant or its agents, employees, contractors, and invitees, which obligation shall survive the expiration or termination of this Lease.

6.4. Approved Plans and Specifications. No improvements (including, without limitations, the Advertising Structures) may be constructed, placed or erected on or at the Premises unless Tenant has submitted to Landlord detailed plans and specifications showing the improvements to be made or work to be done at least forty-five (45) days to undertaking the same and has obtained Landlord's prior written consent thereof (the "Approved Plans and Specifications"), which consent shall not be unreasonably withheld. If Landlord fails to disapprove the plans within said forty-five (45) day period, said plans and specifications shall be deemed to be approved. Tenant agrees to reimburse Landlord for reasonable fees and expenses incurred by Landlord in reviewing such Approved Plans and Specifications and any other plans and any work by Tenant, provided that Landlord submits to Tenant invoices showing such costs. Tenant agrees to secure the Advertising Structures and other improvements and to address reasonable safety and aesthetics issues raised by Landlord. The review and approval by Landlord under this Lease shall be in addition to any other approvals required under all applicable federal, states and local laws, rules and regulations. Tenant shall not make any material changes to the Advertising Structures or to the Premises until and unless Tenant has submitted detailed plans and specifications to Landlord for its prior written approval, not to be unreasonably withheld, which approval process shall follow the steps in this paragraph.

6.5. Permits and Work. Tenant shall procure all necessary permits before undertaking any work on the Premises and shall cause all such work to be performed in a good and first-class workmanlike manner, in accordance with the Approved Plans and Specifications, and in accordance with the requirements of insurers, employing new materials of prime quality and shall defend, hold harmless, exonerate and indemnify Landlord from all injury, loss or damage to any person or property occasioned by such work. Tenant agrees to employ responsible contractors for such work.

6.6. Tenant's Sole Liability and Mechanics Liens. Should any improvements, alterations or repairs be made to the Premises or material be furnished or labor be performed therein or thereon by or on behalf of Tenant, as permitted under the terms of this Lease, Landlord shall not, under any circumstances, be liable for the payment of any expenses incurred or for the value of any work done or material furnished to the Premises or any part thereof, but all such improvements, alterations and repairs shall be done and

materials and labor furnished at Tenant's expense, and the laborers and materialmen furnishing labor and materials to the Premises or any part thereof shall release Landlord and the Property from any liability. Tenant shall not permit any mechanic's liens or similar liens to remain upon the Property for labor and materials furnished to Tenant in connection with work of any character performed at the direction of Tenant and shall cause any such lien to be released of record within sixty (60) days without cost to Landlord. On the Commencement Date and as often as Landlord may reasonably request, Tenant shall submit to Landlord a statement as to whether there are any mechanics liens affecting the Property.

6.7. Ownership of Improvements. During the Term of the Lease, the ownership of the Advertising Structures and any other structures or improvements made by Tenant on the Premises shall remain with Tenant. Upon the expiration or earlier termination of this Lease, Landlord may elect to have ownership of such Advertising Structures assigned and transferred to Landlord. If Landlord makes such election, Landlord shall promptly notify Tenant of the same, and Tenant shall, within fourteen (14) days thereafter, deliver to Landlord a Bill of Sale and/or any other applicable documents transferring ownership of the Advertising Structures and/or other structures/improvements to Landlord at no cost to Landlord. In the event Landlord does not elect to take ownership of the Advertising Structures and/or other structures/improvements, Tenant shall be required to remove the same from the Premises, at its sole cost. Landlord may, at its discretion, permit the base of the Advertising Structures to remain in the ground. In addition, at the expiration or termination of this Lease, Tenant shall, on Landlord's request, assign and transfer to Landlord any permits or approvals related to the construction, use, operation, and/or maintenance of the Advertising Structures.

6.8. Worker's Compensation. Tenant shall maintain worker's compensation insurance during the construction of any improvements, and otherwise as required by law. Tenant agrees that any contractor performing work on behalf of Tenant at the Premises shall carry comprehensive public liability insurance and automobile liability insurance covering such contractors on or about the Premises in amounts reasonably satisfactory to Landlord, and shall name Landlord as an additional insured party. Prior to any construction performed by Tenant or any contractor on behalf of Tenant at the Premises, Tenant shall provide Landlord with a copy of the contractor's insurance policy, indicating liability insurance coverage as specified in Section 9 below, and copies of any approvals, including any building permits, necessary or obtained to conduct said construction.

6.9. Safety. During construction of any improvements, Tenant shall install such safety devices as may be necessary or as Landlord may reasonably require to ensure the safety of Landlord's personnel, persons on the Premises, adjacent property owners and their property, and the general public. Landlord is not responsible for the security of the Premises or any improvements made thereto, which shall be at all times the sole responsibility of Tenant. 6.10. Labor Harmony. Tenant shall provide labor doing any work on the Premises that will work in harmony with all other elements of permanent and/or temporary labor employed or to be employed by Landlord for work at the Property. Any costs or delays incurred by Tenant as a result of any labor action shall be at Tenant's sole cost and expense. Labor actions shall not be considered a force majeure event.

7. MAINTENANCE

Maintenance. Tenant agrees that Landlord shall have no responsibility for the maintenance of the Premises or for securing the same. Tenant shall be responsible, at its sole expense, for the general maintenance of the Advertising Structures and the Premises, including, without limitation, seeding, fertilizing, removing brush, landscaping, and trash removal. Tenant shall keep the Premises and the

Advertising Structures in good and safe order, condition and repair, excepting only reasonable use and wear and damage by fire or other casualty. Tenant agrees to keep, operate, use and maintain every part of the Premises in conformity with the requirements of all applicable laws, regulations, and bylaws, and to do all other work necessary to comply with the foregoing covenant. Tenant shall indemnify, defend, and save harmless Landlord from any and all liability for claims arising out of Tenant's failure to adequately maintain the Advertising Structures and/or the Premises in a safe condition consistent with all laws, rules or regulations applicable to the Premises and/or to Tenant's use thereof.

7.2 Failure to Maintain. If repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and, if Tenant refuses or neglects to commence and diligently pursue the completion of such repairs within thirty (30) days after such demand, or forthwith in the case of emergency repairs, Landlord may (but shall not be required to) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's property by reason thereof. Except in the case of emergency repairs, such repairs made or caused to be made by Landlord shall not unreasonably interfere with Tenant's use of the Premises. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant shall forthwith, on demand, pay to Landlord the costs thereof and, if Tenant shall default in such payment, Landlord shall have the remedies provided herein for default of the Lease.

8. INDEMNIFICATION; RELEASE

Tenant agrees to defend, indemnify and hold harmless Landlord from and against all claims, expenses or liability of whatever nature, however caused, to any person, or to the property of any person, in or about the Premises, or arising from any accident occurring outside the Premises but within the general area of the Premises, where such accident, injury or damage results or is claimed to have resulted from (a) Tenant's use of the Premises or any act, omission or negligence on the part of Tenant or Tenant's contractors, licensees, agents, servants, employees, customers, or invitees, or anyone claiming by, through or under Tenant, (b) any failure on the part of the Tenant to comply with any provision or term required to be performed or complied with by Tenant under this Lease, (c) for the death, injury or property damage suffered by any person relating in any way to Tenant's exercise of its rights under this Lease, and (d) from any and all costs and expenses incurred in connection with any cleanup, remediation removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Substances on or about the Premises to the extent Tenant caused or contributed to such environmental occurrence.

The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including attorneys' fees, and the defense thereof with counsel acceptable to Landlord or counsel selected by an insurance company which has accepted liability for any such claim.

To the maximum extent this Lease may be made effective according to law, Tenant agrees to use the Premises at Tenant's own risk, and Landlord shall not be liable to Tenant for any injury or death to persons entering the Premises pursuant to this Lease, or loss or damage to vehicles, equipment or other personal property of any nature whatsoever of Tenant, or of anyone claiming by or through Tenant, that are brought upon the Premises pursuant to this Lease. Tenant acknowledges and agrees that it accepts the Premises in its "AS IS" condition for the purpose of this Lease, and that Landlord has made no representation or warranty regarding the fitness of the Premises. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

9. INSURANCE

Commencing on the Effective Date, Tenant shall obtain and keep in force at its own expense so long as this Lease remains in effect and thereafter so long as Tenant, or anyone claiming by, through or under Tenant, uses or occupies the Premises or any part thereof, public liability insurance, including coverage for the bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of Tenant under the terms and conditions of this Lease to indemnify, defend and hold harmless Landlord: General Liability: \$1,000,000 per occurrence; Bodily Injury Liability: \$500,000 per occurrence; and Property Damage Liability or a combined single limit of \$2,000,000 annual aggregate limit. Prior to entering the Premises, and on each anniversary of the Commencement Date, or more often as Landlord may reasonably require, Tenant shall provide Landlord with a copy of the insurance policy in each case indicating Landlord is an additional insured on the policy and showing compliance with the foregoing provisions. Tenant shall require the insurer to give at least thirty (30) days' written notice of termination, reduction or cancellation of the policy to Landlord. All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the Commonwealth of Massachusetts and having an A or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

To the extent possible, Tenant shall obtain, for each policy of insurance secured by it, provisions permitting waiver of any claim against Landlord for loss or damage within the scope of the insurance, and Tenant, for itself and its insurers, waives all claims against Landlord as to such claims covered by such insurance.

In the event of Tenant's failure, in whole or in part, at any time during the Term of this Lease or thereafter, to obtain insurance required to be carried by Tenant under the provisions hereof or to provide such evidence thereof in timely fashion, Landlord shall have the right (but shall not be obligated) to procure such insurance and Tenant shall pay to Landlord the costs and expenses thereof as Additional Rent.

10. PERFORMANCE BOND

Lessee shall furnish a Performance Bond to Landlord on the Effective Date in an amount at least equal to fifty (50) percent of the Base Rent for the first year of this Lease as security for the faithful performance of this Lease. The Performance Bond shall be in a form acceptable to the Owner, and shall remain in effect throughout the Term of the Lease. The amount of the Performance Bond shall be adjusted every five (5) years to take into account the increases in the Base Rent.

Landlord may apply the Performance Bond to cure any default of Tenant that is not cured by Tenant after the expiration of the applicable cure period as set forth herein. In the event that the Performance Bond, or any portion thereof, is applied by Landlord pursuant to the provisions hereof, Tenant shall upon demand by Landlord, restore such Performance Bond to the amount specified herein, provided that Tenant does not have a good faith challenge regarding the application of such Performance Bond.

11. DEFAULT; LANDLORD'S REMEDIES

It shall be an event of default if:

Tenant fails to pay Rent when due hereunder and such failure continues for ten (10) days after written notice from Landlord that the same is due;

(ii) Tenant fails to perform or observe any other term or condition contained in this Lease and such failure is not cured within thirty (30) days after written notice from the Town, or for those failures of obligation or covenant which are incapable of being cured within such thirty (30) day period, if Tenant has failed to commence such cure within said thirty (30) day period and thereafter diligently pursued such cure to completion; or

(iii) Tenant shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Tenant's property for the benefit of creditors.

In the event of a default, Landlord shall have the right, but not the obligation, to cure such default at Tenant's sole expense, or may terminate this Lease on not less than thirty (30) days' notice to Tenant and on the date specified in said notice, at which time the Term of this Lease shall terminate and Tenant shall then quit and surrender the Premises to Landlord in compliance with Section 12. If Landlord elects to terminate this Lease, Landlord may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant or other occupants and their effects.

12. TERMINATION; SURRENDER

This Lease and the tenancy hereby created shall cease and terminate at the end of the Term hereof without the necessity of any notice from either Landlord or Tenant to terminate the same, and Tenant hereby waives notice to vacate the Premises and agrees that Landlord shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of property from a tenant holding over to the same extent as if statutory notice had been given.

Within thirty (30) days from the expiration or earlier termination of this Lease, Tenant shall, at Tenant's expense, remove all of Tenant's personal property, if any, and such improvements from the Premises as Landlord requires be removed and surrender the Premises and any improvements made by Tenant to Landlord in the condition that Tenant is required to maintain the same under this Lease. Tenant shall repair any damage caused to the Premises from such removal. All property of Tenant remaining on the Premises after the expiration or earlier termination of this Lease, and all required and permitted improvements, shall be and become the property of Landlord. If Tenant fails to fulfill its obligations hereunder, Landlord shall have the right to use the Performance Bond to remove the Advertising Structures (if Landlord has elected not to take ownership thereof) and Tenant's other person property and to repair any damage caused to the Property. The provisions of this paragraph shall survive expiration or earlier termination of this Lease.

13. CONDEMNATION

In the event Landlord receives notification of any condemnation proceedings affecting the Premises, Landlord will provide notice of the proceeding to Tenant. If a condemning authority takes all of the Property, or a portion of the Premises sufficient, in Tenant's reasonable determination, to render the Premises substantially unsuitable for Tenant, Tenant may terminate this Lease by written notice thereof to Landlord, and this Lease will terminate as of the date the title vests in the condemning authority. The parties will be entitled to share in the condemnation proceeds in proportion to the values of their

respective interests in the Property, which for Tenant may include, where applicable, the unamortized value of its Advertising Structures, moving expenses, and prepaid rent.

14. MISCELLANEOUS

14.1 Notices. Any notice relating to the Premises or to the use thereof shall be in writing and shall be deemed duly served when mailed by registered or certified mail, postage prepaid, or sent by recognized overnight delivery service, addressed to the other party at the addresses listed above, or at such other addresses as the parties may from time to time designate by written notice to the other party.

14.2 Landlord's Access. Landlord or Landlord's agents may, at reasonable times, except in case of emergency when no such notice shall be necessary, enter the Premises to ensure compliance with the terms of this Lease, to take necessary actions to protect the property or persons on the Property, including the Premises, to enforce the terms of this Lease, or for any other purpose.

14.3 No Indirect/Consequential Damages. Landlord shall have no liability to Tenant for any interruption of Tenant's business due to casualty or any other reason. In no event shall Landlord incur liability hereunder with respect to indirect or consequential damages incurred by Tenant or any person acting by or through Tenant due to any act or omission by Landlord or the condition of the Property.

14.4 Survival. Terms and conditions of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease shall so survive. 14.5 Severability. If any term or condition of this Lease is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

14.6 Notice of Lease. Both parties shall, upon request of either, execute and deliver a notice of this Lease in such form, if any, as may be permitted by applicable statute, whereupon the same may be recorded at the applicable Registry of Deeds.

14.7 Waiver. The failure on the part of the Landlord or Tenant, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Lease or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

14.8 Headings and Captions for Convenience Only. The captions and headings throughout this Lease are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Lease, nor in any way affect this Lease, and shall have no legal effect.

14.9 Entire Agreement of Parties; No Oral Agreement. There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous

negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Lease.

14.10 Governing Law. This Lease shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals on the date and year first above mentioned.

LANDLORD:

TENANT:

TOWN OF TYNGSBOROUGH,
By its Town Administrator

By: _____
Name: